Tie Dee Kheng v Unit Keselamatan dan Penguatkuasaan Negeri & Ors

HIGH COURT (SIBU) — APPLICATION FOR JUDICIAL REVIEW NO SBW-13–3/9 OF 2019
LIM HOCK LENG J
21 MAY 2020

Administrative Law — Judicial review — Application for — Review against first respondent's seizure and detention of applicant's vessel laden with wood waste on board — Whether license required from Forestry Department for collection of wood waste and debris — Whether first respondent acted in excess of its powers — Whether subjected to judicial review — Whether s 108 of Forests Ordinance Ordinance ousted jurisdiction of court and immunised respondents from legal proceedings — Forests Ordinance ss 2(1) & 108 — Sarawak Rivers Ordinance ss 2(1) & 12(1)(a) to (d)

The applicant for judicial review was the sole proprietor of Dee Huat Keng Enterprise which was a company in the business of collecting and transporting waste products. The subject matter of the judicial review was one of the applicant's vessels ie Buana Indah ('the vessel') which was seized and detained by the first respondent ie Unit Keselamatan dan Penguatkuasaan Negeri Sarawak ('UKPN') together with its crane and wood waste laden on board. The applicant contended that the seizure and detention of the vessel was ultra vires the UKPN's powers, and illegal/irrational, without taking into account relevant considerations. The applicant was requested by a longhouse headman from Nanga Buan Ngemah, Kanowit, to take away wood waste that would be collected from a gotong-royong. The applicant requested the headman, Tuai Rumah Arun ak Unchat ('Tuai Rumah') to seek approval from the relevant authority. The Tuai Rumah then wrote a letter to the Sarawak Rivers Board ('SRB') to seek its approval and also informed its intention to enlist the help of the applicant to take away the wood waste. With the approval of the SRB having been secured, the vessel was deployed to transport the wood waste to a wharf belonging to Subur Tiasa Particleboard Sdn Bhd ('Subur Tiasa') to be deposited as landfill. Before the vessel could reach its destination, it was stopped by the UKPN at the Kanowit Jetty. The permits of the vessel and the SRB's written approval were produced and the vessel was released. Subsequently, while the vessel was berthed at Subur Tiasa's wharf and the wood waste was being discharged, the UKPN searched and seized it together with its crane and wood waste notwithstanding production of the vessel's permits and the SRB approval letter. The issues for consideration were: (a) whether a license was required from the Forestry Department for the collection of wood waste and debris along a river or the river bank, and the UKPN had acted in excess of

its powers; (b) whether the seizure by the UKPN was carried out in the course of a criminal investigation and was not subjected to judicial review; and (c) whether s 108 of the Forests Ordinance ('the Forests Ordinance') ousted the jurisdiction of the court and the respondents were immunised from legal proceedings.

Held:

(1) It was doubtful that wood waste and debris would fall into the definition of 'forest produce' provided in s 2(1) of the Forests Ordinance. The wood waste and debris would have lost their original characteristics as forest produce, and transited to their present state as unwanted litter or trash. Wood waste or debris could not be equated with wood produce which, in order to attract the application of the Forests Ordinance, must be 'found in or brought from a forest reserve, protected forest, communal forest, Government reserve, other State land or alienated land' as defined under s 2(1)(a) of the Forests Ordinance; and not from a jetty. The respondents had travelled outside the parameters of the Forests Ordinance and acted in an ultra vires manner in insisting that the applicant must have a licence to collect, handle or transport wood waste and debris (see paras 23–25).

(2) Reliance may be placed on the maxim 'generalia specialibus non derogant' to hold that the specific and unequivocal provisions of the Sarawak Rivers Ordinance ('the Sarawak Rivers Ordinance') prevailed over the general provisions of the Forests Ordinance, if at all wood waste and debris fell within the definition of 'forest produce' and attracted the application of the latter legislation. Section 12(1)(a)–(1)(d) of the Sarawak River Ordinance which spelled out the unequivocal purposes of the legislation must be interpreted to promote or give effect to those purposes. Applying the rule of construction *noscitur a sociis*, even if it could be said that wood waste was to be treated as forest produce, the associated words 'forest' and 'land' in s 2(1)(a) and (b) of the Sarawak River Ordinance limited the application of forest produce to those found on land. Importantly, even if the Forests Ordinance was applicable, cognisance must be taken of the words '(n)otwithstanding anything to the contrary contained in any written law …' in s 12(1) of the Sarawak Rivers Ordinance (see paras 28–30).

(3) There was no indication as to the outcome of the investigation of whether it was ongoing in respect of the vessel Buana Indah, and one could not help but think that the seizure was mala fide, described as a clear case of abuse of powers and/or unfair and oppressive exercise of powers. If the seizure of the vessel Buana Indah was not mala fide, illegal or irrational, it was at the very least an error of law which was open to judicial review. The ultra vires, mala fide and illegal or irrational seizure and detention of the vessel Buana Indah took off the protection conferred by s 108 of the

Forests Ordinance. If at all the UKPN's acts were not tainted in that manner, those acts were errors of law susceptible to judicial review. In summary, s 108 of the Forests Ordinance did not immunise the respondents (see paras 33, 36–38 & 40).

[Bahasa Malaysia summary

Pemohon untuk semakan kehakiman adalah pemilik tunggal Dee Huat Keng Enterprise yang merupakan syarikat dalam perniagaan mengumpul dan mengangkut bahan buangan. Subjek semakan kehakiman adalah salah satu kapal pemohon iaitu Buana Indah ('kapal') yang dirampas dan ditahan oleh responden pertama iaitu Unit Keselamatan dan Penguatkuasaan Negeri Sarawak ('UKPN') bersama-sama dengan kren dan sisa kayu sarat di atas kapal. Pemohon berpendapat bahawa rampasan dan penahanan kapal itu ultra vires kuasa UKPN, dan menyalahi undang-undang/tidak rasional, tanpa mengambil kira pertimbangan yang relevan. Pemohon diminta oleh ketua rumah panjang dari Nanga Buan Ngemah, Kanowit, untuk mengambil sisa kayu yang akan dikumpulkan dari gotong-royong. Pemohon meminta ketua, Tuai Rumah Arun ak Unchat ('Tuai Rumah') untuk meminta kebenaran daripada pihak berkuasa yang berkenaan. Tuai Rumah kemudian menulis sepucuk surat kepada Lembaga Sungai-Sungai Sarawak ('SRB') untuk meminta kebenaran dan juga memberitahu niatnya untuk meminta bantuan pemohon untuk membuang sisa kayu. Dengan persetujuan SRB, kapal itu digunakan untuk mengangkut sampah kayu ke dermaga milik Subur Tiasa Particleboard Sdn Bhd ('Subur Tiasa') untuk diletakkan sebagai tapak pelupusan. Sebelum kapal dapat sampai ke tempat tujuannya, kapal itu dihentikan oleh UKPN di Jeti Kanowit. Permit kapal dan kelulusan bertulis SRB telah dikemukakan dan kapal dilepaskan. Selepas itu, sementara kapal berlabuh di dermaga Subur Tiasa dan sampah kayu dibuang, UKPN menggeledah dan merampasnya bersama-sama dengan kren dan sisa kayu walaupun pengemukaan permit kapal dan surat kelulusan SRB. Isu-isu untuk pertimbangan adalah: (a) sama ada lesen diperlukan dari Jabatan Perhutanan untuk mengumpulkan sampah kayu dan serpihan di sepanjang sungai atau tebing sungai, dan UKPN telah bertindak melebihi kuasanya; (b) sama ada rampasan oleh UKPN dilakukan dalam proses siasatan jenayah dan tidak tertakluk kepada semakan kehakiman; dan (c) sama ada s 108 Forests Ordinance ('Forests Ordinance') menggugurkan bidang kuasa mahkamah dan mengimunkan responden dari prosiding undang-undang.

Diputuskan:

(1) Tidak diragukan lagi bahawa sampah dan serpihan kayu termasuk dalam definisi 'hasil hutan' yang diperuntukkan dalam s 2(1) Forests Ordinance. Sampah dan serpihan kayu akan kehilangan ciri asalnya sebagai hasil hutan, dan beralih ke keadaan sekarang sebagai sampah yang tidak diingini. Sampah kayu atau serpihan tidak dapat disamakan

dengan hasil kayu yang, untuk menarik penggunaan Forests Ordinance, harus 'found in or brought from a forest reserve, protected forest, communal forest, Government reserve, other State land or alienated land' seperti yang ditakrifkan di bawah s 2(1)(a) Forests Ordinance; dan bukan dari jeti. Responden telah keluar di luar parameter Forests Ordinance dan bertindak ultra vires dengan menegaskan bahawa pemohon mesti mempunyai lesen untuk mengumpulkan, mengendalikan atau mengangkut sampah kayu dan serpihan (lihat perenggan 23–25).

(2) Kebergantungan boleh diletakkan pada maxim 'generalia specialibus non derogant' untuk memutuskan bahawa peruntukan khusus dan nyata dari Sarawak Rivers Ordinance ('Sarawak Rivers Ordinance') mengatasi peruntukan umum Forests Ordinance, jika sama sekali sampah kayu dan serpihan termasuk dalam definisi 'hasil hutan' dan menarik penggunaan perundangan yang selepasnya. Seksyen 12(1)(a)–(1)(d) Sarawak Rivers Ordinance yang menjelaskan tujuan nyata perundangan harus ditafsirkan untuk mempromosikan atau memberi kesan kepada tujuan tersebut. Menerapkan peraturan interpretasi *noscitur a sociis*, walaupun dapat dikatakan bahawa sampah kayu diperlakukan sebagai hasil hutan, perkataan yang berkaitan 'hutan' dan 'tanah' dalam s 2(1)(a) dan (1)(b) Sarawak Rivers Ordinance membatasi penggunaan hasil hutan kepada yang terdapat di darat. Yang penting, walaupun Forests Ordinance boleh diguna pakai, makluman mesti diambil dengan perkataan '(n)otwithstanding anything to the contrary contained in any written law ...' dalam s 12(1) Sarawak Rivers Ordinance (lihat perenggan 28–30).

(3) Tidak ada indikasi mengenai hasil penyiasatan sama ada ia masih berjalan berkenaan kapal Buana Indah, dan seseorang tidak dapat menahan diri untuk menyangka bahawa rampasan itu mala fide, yang digambarkan sebagai kes penyalahgunaan kuasa yang jelas dan/atau pelaksanaan kuasa yang tidak adil dan menindas. Sekiranya rampasan kapal Buana Indah bukan mala fide, tidak sah atau tidak rasional, ia sekurang-kurangnya merupakan kesalahan undang-undang yang terbuka untuk semakan kehakiman. Rampasan dan penahanan kapal Buana Indah ultra vires, mala fide dan tidak sah atau tidak rasional melepaskan perlindungan yang diberikan oleh s 108 Forests Ordinance. Sekiranya sama sekali tindakan UKPN tidak dicemari dengan cara itu, tindakan tersebut merupakan kesalahan undang-undang yang terdedah kepada semakan kehakiman. Kesimpulannya, s 108 Forests Ordinance tidak memberi imunisasi kepada responden (lihat perenggan 33, 36–38 & 40).]

Cases referred to

Arab Malaysian Merchant Bank Bhd & Anor v Tan Giap How and another appeal [2019] 5 MLJ 364, CA (distd)

Dr Michael Jeyakumar Devaraj v Peguam Negara Malaysia [2013] 2 MLJ

321; [2013] 2 CLJ 1009, FC (refd)
Indira Gandhi a/p Mutho v Pengarah Jabatan Agama Islam Perak & Ors and other appeals [2018] 1 MLJ 545, FC (refd)
Ipoh Garden Sdn Bhd v Ismail Mahyuddin Enterprise Sdn Bhd [1975] 2 MLJ 241; [1975] 1 LNS 66 (refd)
Kumpulan Perangsang Selangor Bhd v Zaid bin Hj Mohd Noh [1997] 1 MLJ 789; [1997] 2 CLJ 11, SC (refd)
Petroliam Nasional Bhd v Nik Ramli Nik Hassan [2004] 2 MLJ 288; [2003] 4 CLJ 625, FC (refd)
R Rama Chandran v The Industrial Court of Malaysia & Anor [1997] 1 MLJ 145; [1997] 1 CLJ 147, FC (refd)
R v Director of Public Prosecutions, ex p Kebilene and others [2000] 2 AC 326, HL (refd)
Suruhanjaya Pencegahan Rasuah Malaysia & Ors v Latheefa Beebi Koya & Anor [2017] 5 MLJ 349; [2017] 10 CLJ 1, FC (distd)
Syarikat Kenderaan Melayu Kelantan Bhd v Transport Workers' Union [1995] 2 MLJ 317; [1995] 2 CLJ 748, CA (refd)

Legislation referred to

Administration of the Religion of Islam (Perak) Enactment 2004 s 101
Forests Ordinance (Cap 75) ss 2(1), (1)(a), (1)(b), 40(1), 108
Interpretation Ordinance of Sarawak (Cap 61) s 9
Sarawak Rivers Ordinance (Cap 4) s 12(1), (1)(a), (1)(b), (1)(c), (1)(d)

Boston Ho (Wong, Orlando Chua & Kuok) for the applicant.
Ma Xiang Rui (Sarawak State Attorney-General's Chambers) for the respondent.

Lim Hock Leng J:

PARTIES AND SUBJECT MATTER

[1] The applicant for judicial review is the sole proprietor of Dee Huat Kheng Enterprise which is in the business of collecting and transporting waste products.

[2] The applicant has three vessels, namely, King Tak, Fuok Hua and Buana Indah.

[3] The subject matter of the judicial review is the vessel Buana Indah ('the vessel') which was seized and detained by the Unit Keselamatan dan Penguatkuasaan Negeri Sarawak, together with its crane and waste wood laden on board, on 26 June 2019.

[4] Named as the first respondent was Unit Keselamatan dan Penguatkuasaan Negeri Sarawak ('UKPN'). The second respondent is its security officer. The third respondent is the Government of Sarawak.

APPLICANT'S CASE AND RELIEFS SOUGHT

[5] The applicant contended that the seizure and detention of the vessel was ultra vires the UKPN's powers, and illegal/irrational, without taking into account relevant considerations. Among the reliefs sought were an order for certiorari to quash the continued detention of the vessel, and a declaration that the UKPN's action is invalid in law. Apart from damages, the applicant also prayed for an order of mandamus to compel the UKPN to revoke its disputed action and to compel the first and second respondents to return the vessel, its crane and the waste wood unconditionally.

BACKGROUND

Incidence before the seizure of Buana Indah

[6] To give context to the legal issues involved, it is necessary to set out the salient facts of the case in some detail.

[7] All three vessels have been issued with valid shipping licences and river transport permits. Aside from its business of collecting and transporting general waste products, the applicant was also involved in the gratuitous collection of wood waste from the riverbanks or rivers for the villagers or residents in the areas nearby.

[8] On or about 15 February 2019, the UKPN seized the vessel King Tak and wood waste on board. The crew members were arrested. However, it was later released to the applicant with terms and conditions imposed. The outcome of the investigation is still unknown.

[9] On or about 14 March 2019, the Systems Application and Development Unit ('SADU') of the Forest Department of Sarawak seized the vessel Fuok Hua, its crane, and wood waste on board while it was berthed, following a voyage to transport wood waste for riverine residents. The following month, the vessel Fuok Hua and the crane were released unconditionally, as the Forest Department did not find the applicant to be involved in any illegal logging activities and the wood waste was rubbish fit for disposal.

[10] Those were the incidents which took place before the vessel Buana Indah was seized and detained.

Events leading to the seizure of Buana Indah

[11] In early May 2019, the applicant was requested by a longhouse headman from Nanga Buan Ngemah, Kanowit, to take away wood waste that would be collected from a *gotong-royong*. Due to his brushes with the law, the applicant requested the headman, Tuai Rumah Arun ak Unchat, to seek approval from the relevant authority.

[12] The Tuai Rumah then wrote a letter dated 11 May 2019 to the Lembaga Sungai-Sungai Sarawak (the Sarawak Rivers Board, 'SRB') to seek its approval to carry out the *gotong-royong* to gather 'sampah dahan kayu, akar kayu, dan sebagainya,' ahead of the Gawai Festival, for safety purposes and to prevent damage to the jetty of his people.

[13] The Tuai Rumah also informed the SRB of its intention to enlist the help of the applicant to take away the wood waste.

[14] The SRB gave its approval subject to conditions (relating to the disposal, safety and prohibition of open-air burning) vide a letter dated 13 May 2019. See exhs TDK 8 and TDK 9 of the applicant's affidavit in support.

[15] With the approval from SRB having been secured, the vessel Burna Indah was deployed to transport the waste wood to a wharf belonging to Subur Tiasa Particleboard Sdn Bhd ('Subur Tiasa') to be deposited as landfill. Before the vessel could reach its destination, it was stopped by UKPN officers at the Kanowit jetty on 23 June 2019. An inspection was carried out. The officers were purportedly looking for stolen logs. None were found. The permits of the vessel and the SRB's written approval were produced and the vessel was released.

[16] On 26 June 2019, while the vessel was berthed at Subur Tiasa's wharf and the wood waste was being discharged, the second respondent and officers from the UKPN searched and seized it together with its crane and wood waste notwithstanding production of the vessel's permits and the SRB approval letter dated 13 May 2019.

[17] The vessel remained under the detention of the UKPN up to the time the decision in this case was delivered on 26 February 2020.

[18] The issues are whether:

(a) a licence is required from the Forestry Department for the collection of wood waste and debris along a river or the river bank, and the UKPN had acted in excess of its powers;

(b) the seizure by the UKPN was carried out in the course of a criminal investigation and is not subject to judicial review; and

(c) s 108 ousts the jurisdiction of the court and the defendants are immunised from legal proceedings.

[19] The first and second issues may be taken together. In his affidavit in opposition ('AIO'), para 21, the second respondent averred that 'there was no licence or permit produced by the applicant to collect the wood wastes and in this circumstance, the seizure of the vessel and wood wastes was clearly done in the course of an investigation'.

[20] The determination of those issues requires consideration of the Forests Ordinance, and the Sarawak Rivers Ordinance. Specifically, it needs to be considered if the Forests Ordinance applies, or whether there is an overlap between the two ordinances and if so, whether one of the other is to prevail, or the requirements of both require compliance.

[21] Section 40(1) of the Forests Ordinance provides that the taking of forest produce in permanent forests, State land and alienated land shall be controlled and regulated by the Director who may issue such licences in such form and under such conditions as he may determine.

[22] That leads us to the question as to what constitutes 'forest produce'. Section 2(1) of the Forests Ordinance defines the subject to include guano, peat, trees and all parts, plants, tusks, horns, edible birds' nests, timber, firewood, charcoal and so on. If the wood waste and debris are 'forest produce,' a licence would be required. If not, a licence would not be required. As the determination of the threshold issue, whether a licence is needed, turns on the definition of 'forest produce,' it would be necessary to reproduce s 2(1) in its entirety:

forest produce' includes —

(a) the following when found in or brought from a forest reserve, protected forest, communal forest, Government reserve, other State land or alienated land —

(i) guano, peat, rock, sea-shell and surface soil;

(ii) trees and all parts and produce not hereinafter mentioned of trees;

(iii) plants including grass, climbers, creepers and all parts and produce of such plants; or

(iv) tusks, horns, silk-cocoons, honey wax and edible birds' nests;

A (b) the following when found in or brought from a forest reserve, protected forest, communal forest, Government reserve, other State land or alienated land —

(i) timber;

B (ii) firewood;

(iii) charcoal;

(iv) bark;

(v) wild rubbers; or

C (vi) cordwood;

[23] It is doubtful that wood waste and debris would fall into the definition of 'forest produce'. The wood waste and debris would have lost their original characteristics as forest produce, and transited to their present state as unwanted litter or trash, much in the same way that ashes from a tree consumed by a forest fire would not be treated as forest produce such that it would fall into the ambit of the Forests Ordinance. Conversely, a pencil, although originally an item of forest produce, would not be subject to the Forests Ordinance.

[24] There is another reason why the wood waste or debris cannot be equated with wood produce which, in order to attract the application of the Forests Ordinance, must be 'found in or brought from a forest reserve, protected forest, communal forest, Government reserve, other State land or alienated land,' as defined under s 2(1)(a); and not from a jetty. In this regard, reference is made to the Tuai Rumah's letter. The relevant passage reads:

> Saya TR Arun Ak Unchat, IC No 590527-13-5343 dari Nanga Buan Ngemah, 96700, Kanowit sebagai wakil dengan hormatnya minta sokongan dari tuan untuk mengadakan GOTONG-ROYONG di tempat Jeti kami yang sudah penuh dengan sampah dahan kayu, akar kayu dan sebagainya. Untuk pengetahuan tuan, sampah-sampah ini akan membahayakan keselamatan kami dan juga akan merosakkan Jeti kami yang begitu pentingnya itu. Begitu juga kami faham menjaga kebersihan sungai adalah tanggungjawab kami juga.

[25] It is clear from the Tuai Rumah's letter that the *gotong-royong* is for the collection of trash or rubble from the jetty, so as to avoid any damage to the jetty and for safety purposes. It is also clear that the respondents have travelled outside the parameters of the Forests Ordinance and acted in an ultra vires manner in insisting that the applicant must have a licence to collect, handle or transport wood waste and debris.

[26] Such activity centred on the jetty would appear to be regulated by the Sarawak Rivers Ordinance, the preamble of which reads:

An Ordinance to provide for the control and regulation of traffic by water in ports and harbors or on rivers wholly within Sarawak and in the foreshores and for matters connected therewith and incidental thereto.

[27] It bears noting that s 12(1) of the Sarawak Rivers Ordinance provides:

Notwithstanding anything to the contrary contained in any written law, the Board shall, within the limits of any river as may be declared under section 11, be responsible for the discharge and provision of the following duties and services:

(a) the provision of buoys, moorings and lights including other aids to navigation to regulate, and for the safety of, riverine traffic;

(b) to collect, remove and dispose of or otherwise to deal with any object, wreck, refuse, pollutant, tree, timber, log, weed, long grass or any other things or materials in the rivers;

(bb) to take such measures as may be considered necessary or expedient to promote and to ensure safety of riverine traffic;

(c) to remove any dead wood, dilapidated fence, logs or other material left on the banks or abutting upon such river;

[28] Reliance may be placed on the maxim *generalia specialibus non derogant* to hold that the specific and unequivocal provisions of the Sarawak Rivers Ordinance prevail over the general provisions of the Forests Ordinance, if at all wood waste and debris fall within the definition of 'forest produce' and attract the application of the latter legislation. Section 12(1)(a)–(1)(d) of the Sarawak River Ordinance which spells out the unequivocal purposes of the legislation must be interpreted to promote or give effect to those purposes. See s 9 of the Interpretation Ordinance of Sarawak. On a related note, the wide and comprehensive provision do not limit the manner in which the SRB may discharge its responsibilities and duties, including the approval given to the Tuai Rumah.

[29] Applying the rule of construction *noscitur a sociis*, even if it can be said that wood waste is to be treated as forest produce, the associated words 'forest' and 'land' in s 2(1)(a) and (b) limit the application of forest produce to those found on land. See *Ipoh Garden Sdn Bhd v Ismail Mahyuddin Enterprise Sdn Bhd* [1975] 2 MLJ 241; [1975] 1 LNS 66.

[30] Importantly, even if the Forests Ordiance is applicable, cognisance must be taken of the words '(n)otwithstanding anything to the contrary contained in any written law ...' in s 12(1) of the Sarawak Rivers Ordinance.

[31] As for the respondents' contention that the actions of a public authority in the exercise of its investigative powers are not susceptible to judicial review,

reliance was placed on the Court of Appeal's decision in *Arab Malaysian Merchant Bank Bhd & Anor v Tan Giap How and another appeal* [2019] 5 MLJ 364 and *Suruhanjaya Pencegahan Rasuah Malaysia & Ors v Latheefa Beebi Koya & Anor* [2017] 5 MLJ 349; [2017] 10 CLJ 1 where Abu Samah Nordin FCJ in delivering the decision of the Federal Court held:

> The general conclusion that can be drawn from the cases referred to above is that the actions or decisions of a public authority in exercise of its powers in the course of criminal investigation or enquiry is not open to judicial review. Therefore, the answer to the question posed to this court is that the exercise of legitimate power, namely, the issuance of the notice pursuant to s 30(1)(a) of the Act by the first appellant through the third appellant is not amenable to judicial review. The notice was issued in order to assist the appellants in the investigation of a corruption offence under s 16(b) of the Act. To hold otherwise, would expose the criminal investigative processes of all law enforcement agencies to constant judicial review. On the facts of this case, the respondents failed to establish that the notice was issued mala fide or in bad faith.

[32] These cases, which would otherwise be binding, can be distinguished. While 'the exercise of legitimate power ... is not amenable to judicial review,' it is clear that the principle is a 'general conclusion' and the decision of the apex court was reached 'on the facts of this case'.

[33] Thus, in *R v Director of Public Prosecutions, ex p Kebilene and others* [2000] 2 AC 326, Lord Steyn held that the decision of the Director of Public Prosecutions could be reviewable in cases of dishonesty or mala fides or exceptional circumstances. The seizure of the of the purported investigation yet to be known more than one year later is indicative of mala fides notwithstanding the conditional release of the said vessel. Likewise, there is no indication as to the outcome of the investigation or whether it is ongoing in respect of the vessel Buana Indah, and one cannot help but think that the seizure is mala fide, described as a clear case of abuse of powers and/or unfair and oppressive exercise of powers in the applicant's affidavit in support.

[34] In *Dr Michael Jeyakumar Devaraj v Peguam Negara Malaysia* [2013] 2 MLJ 321; [2013] 2 CLJ 1009, the Federal Court, citing *R Rama Chandran v The Industrial Court of Malaysia & Anor* [1997] 1 MLJ 145; [1997] 1 CLJ 147, *Kumpulan Perangsang Selangor Bhd v Zaid bin Hj Mohd Noh* [1997] 1 MLJ 789; [1997] 2 CLJ 11 and *Petroliam Nasional Bhd v Nik Ramli Nik Hassan* [2004] 2 MLJ 288; [2003] 4 CLJ 625, held:

> We have no hesitation in accepting that the executive's discretion, whether by statute or prerogative is amenable to judicial review. However, whether such discretion is amenable to judicial review is dependent on the facts of each case.

[35] It will be recalled that the Federal Court had in the landmark case of *R*

Rama Chandran decided that the courts are able to scrutinise not only the decision-making process but also the decision itself on grounds of illegality, irrationality and proportionality.

[36] If the seizure of the vessel Buana Indah is not mala fide, illegal, or irrational, it is at the very least an error of law which is open to judicial review. As set out above, the wood waste and debris on the vessel cannot be equated with forest produce from a forest reserve or land as defined by s 2(1) of the Forests Ordinance.

[37] The ultra vires, mala fide, and illegal or irrational seizure and detention of the vessel Buana Indah takes off the protection conferred by s 108 as the statutory provision itself makes clear:

> No action shall be brought, instituted or maintained in any court against any forest officer, police officer, officer of customs or any public servant either personally or in his official capacity for or on account of or in respect of any act directed or done by him or purporting to have been directed or done by him for the purpose of carrying into effect this Ordinance and any rules made thereunder, and no suit or prosecution shall lie in any court against any other persons for or on account of or in respect of any act done or purporting to have been done by him under direction or instruction of any forest officer, police officer, officer of customs or any public servant given for any such purpose as aforesaid:
>
> *Provided that the act of such officer or person was done in good faith and in the reasonable belief that it was necessary for the purpose intended* to be served by it and for the carrying out of the provisions of this Ordinance and any rules made thereunder. (Emphasis added.)

[38] If at all the UKPN's acts were not tainted in that manner, those acts were errors of law susceptible to judicial review. Support may be drawn from *Syarikat Kenderaan Melayu Kelantan Bhd v Transport Workers' Union* [1995] 2 MLJ 317; [1995] 2 CLJ 748 where Gopal Sri Ram JCA (as he then was) held that since an inferior tribunal has no jurisdiction to make an error of law, its decision will be open to judicial review no matter how widely an ouster clause is drafted.

[39] The high-water mark was reached in *Indira Gandhi a/p Mutho v Pengarah Jabatan Agama Islam Perak & Ors and other appeals* [2018] 1 MLJ 545. There, the Federal Court held '(t)he issuance of certificates of conversion by the registrar was an exercise of a statutory power under the Perak Enactment. The boundaries of the exercise of powers conferred by legislation was solely for the determination by the courts and if an exercise of power under a statute exceeded the four corners of that statute, it would be ultra vires and a court of law ought to be able to hold it as such. However, s 101 of the Perak Enactment provided that the decision of the Registrar of Muallafs was final. Nevertheless,

it was settled law that the supervisory jurisdiction of courts to determine the legality of administrative action could not be excluded even by an express ouster clause. It would be repugnant to the rule of law and the judicial power of the courts if the registrar's decision was immune from review'.

[40] In summary, s 108 of the Forests Ordinance does not immunise the respondents. The court accordingly grants:

(a) an order of certiorari to quash the decisions, acts and omissions of the UKPN with respect to the search and detention of the applicant's vessel, Buana Indah, its crane and the waste wood on board;

(b) a declaration that the said decisions, acts and omissions of the UKPN are invalid in law;

(c) an order of mandamus to compel the respondents to discharge, revise and revoke the said decisions, acts and omissions of the UKPN;

(d) an order of mandamus to compel the first and second respondents

(e) to release and return the applicant's vessel, Buana Indah, its crane and the waste wood on board unconditionally;

(f) an order that damages to the applicant be assessed; and

(g) RM20,000 costs to be paid by the respondents to the applicant subject to payment of the allocatur fee.

Order accordingly.

Reported by Ahmad Ismail Illman Mohd Razali